

**Before the
FEDERAL COMMUNICATIONS COMMISSION DA 96-453
WASHINGTON, D.C. 20554**

In re Application of)	
)	
EBE Communications Limited Partnership)	
(Assignor))	
)	
and)	BALH-951130ED
)	
Harry J. Pappas)	
(Assignee))	
)	
For Assignment of License of)	
KFRE(AM), Fresno, California)	

MEMORANDUM OPINION AND ORDER

Adopted: March 27, 1996

Released: March 28, 1996

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned application for assignment of license of KFRE(AM), Fresno, California, from EBE Communications Limited Partnership ("EBE") to Harry J. Pappas ("Pappas"). There is a related request for waiver of 47 C.F.R. § 73.3555(c), the Commission's one-to-a-market rule, which restricts common radio and television station ownership in the same market.¹ The application is unopposed. For the reasons stated below, we will grant the waiver request and the assignment application.

¹ Section 73.3555(c) of the Commission's rules prohibits the common ownership of radio and television stations in the same market if the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station or, conversely, if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station. See 47 C.F.R. § 73.3555(c). The Bureau has been delegated authority to rule on uncontested one-to-a-market cases that involve stations in the top 100 television markets that are clearly consistent with Commission precedent. See Application of Louis C. DeArias, Receiver, FCC 96-15, released February 2, 1996.

2. Pappas is currently the licensee of KMPH-FM, Hanford, California and KMPH(TV), Channel 26 (Fox affiliate), Visalia, California, a combination of facilities ordinarily precluded by the one-to-a-market rule. The Commission granted Pappas a permanent waiver of that rule to own both of these stations in 1992. See Liggett Broadcasting, Inc., 7 FCC Rcd 7124 (1992). By the instant application, Pappas seeks to acquire an AM station, KFRE(AM), in the Fresno-Visalia market. Since the Grade A contour of KMPH(TV) encompasses Fresno -- KFRE(AM)'s city of license -- grant of the subject assignment application would create a new radio-television combination that requires waiver of the one-to-a-market rule. See 47 C.F.R. § 73.3555(c).

Request for Waiver of the One-to-a-Market Rule

3. Pappas bases its waiver request on the one-to-a-market standards enunciated in the Second Report and Order in MM Docket 87-7, 4 FCC Rcd 1741 (1989) ("Second Report and Order"), recon. denied in part and granted in part ("Second Report and Order Recon."), 4 FCC Rcd 6489 (1989). Under these standards, the Commission presumptively favors requests involving (1) stations serving the top 25 markets where at least 30 separately owned, operated, and controlled stations will remain following the proposed combination; or (2) "failed" stations (stations that have not been operational for a substantial period of time or are involved in bankruptcy proceedings). Otherwise, the requests must be evaluated under a more rigorous case-by-case approach. 47 C.F.R. § 73.3555(c) note 7.

4. Since Fresno-Visalia is the 57th largest Designated Market Area (DMA) in the country and no claim of a "failed station" is made, Pappas' waiver request must be reviewed under the case-by-case standard. Under this standard, the Commission makes a public interest determination based upon the following five criteria: (1) the public service benefits that will arise from the joint operation of the facilities such as economies of scale, cost savings and programming and service benefits; (2) the types of facilities involved; (3) the number of media outlets owned by the applicant in the relevant market; (4) the financial difficulties of the stations involved; and (5) the nature of the relevant market in light of the level of competition and diversity after joint operation is implemented. See Second Report and Order, 4 FCC Rcd at 1753. In support of its request, Pappas submits a showing which addresses each of the five case-by-case factors.²

5. Benefits of Joint Operation. Pappas contends that significant public service benefits and cost savings will be realized if the Commission allows the proposed combination. According to Pappas, the consolidation of KFRE(AM) with KMPH-FM and KMPH(TV) will allow KFRE(AM) to draw upon KMPH(TV)'s existing news-gathering equipment and resources resulting in enhanced news and public affairs programming for KFRE(AM). Pappas further states that KMPH(TV)'s substantial news staff, which covers events and other important issues in

² However, we note that not all five of the factors mentioned are necessarily relevant in each case. Second Report and Order Recon., 4 FCC Rcd at 6491, para. 18; South Central Communications Corporation, 5 FCC Rcd 6697, 6698 (1990).

the local communities, will be expanded to include coverage for KFRE(AM). Pappas also maintains that KFRE(AM) would benefit from news resources at KMPH-FM, which it states devotes almost all of its broadcasting to news -- including agricultural news in the heavily agricultural San Joaquin valley. Pappas states that if the sale is approved, KFRE(AM), which previously broadcast a county music format, will switch to an all news/talk format and KFRE(AM)'s news gathering capabilities will be greatly enhanced through access to Pappas' existing news services and facilities. Further, Pappas anticipates that joint operation of KFRE(AM), KMPH-FM and KMPH(TV) will result in cost savings of between \$165,000 and \$235,000 in the first year.³ Specifically, Pappas anticipates savings of between \$100,000 and \$150,000 through staff consolidation; \$20,000 to \$30,000 through combining administrative functions such as payroll, accounting and personnel; \$10,000 to \$15,000 in a combined engineering staff; \$5,000 to \$10,000 in reduced supply and promotional costs; and \$30,000 in studio rent.

6. Other Media Outlets/Types of Facilities. Pappas is the licensee of stations KMPH-FM, Hanford, California and KMPH(TV), Visalia, California. Other than these facilities, it has no other media interests in the market. KFRE(AM) is a Class B station which operates on 940 kHz with a full time power of 50 kw using a directional antenna. KMPH-FM is a Class B FM station operating on 107.5 MHz with 20.3 kw effective radiated power (ERP) from an antenna height of 784 feet above average terrain (HAAT). KMPH(TV), a Fox affiliated UHF television station, operates on Channel 26 with 3236 kw ERP from an antenna at 792 meters HAAT. Pappas asserts that, since there are fifteen FM stations with comparable facilities, there is no danger that the proposed combination will dominate the market from a technical standpoint. Pappas further argues that, while KFRE(AM) has greater power than the other AM stations in the market, its low Fall 1995 Arbitron audience share figure of 1.6 percent clearly indicates that it is not a dominant force.

7. Economic Status. While Pappas does not assert that the stations are "failed stations" as defined by the Commission, it does maintain that KFRE(AM) and KMPH-FM are financially troubled stations. While EBE has not maintained separate financial records for KFRE(AM), it estimates that KFRE(AM) incurred a net loss for 1995 of \$188,270. In addition, Pappas asserts that KMPH-FM lost over \$4.2 million from 1987 through April of 1992 and continues to incur losses. Specifically, Pappas contends that the operating losses increased from \$835,285 in 1993 to \$862,183 in 1994 and finally to \$896,635 through November of 1995 -- a loss of more than \$2.5 million since 1992.

³ KFRE(AM) is now operated in conjunction with co-owned KNAX(FM), Fresno, California. A separate application is pending to assign the license of KNAX(FM) to a party unrelated to Pappas. According to Pappas, the joint operation of KFRE(AM) and KNAX(FM) makes it difficult to determine a precise figure for KFRE(AM)'s former expenditures as well as derive a precise savings figure. In light of this, Pappas provides an approximation of the likely range of savings for joint operation of the stations by him by estimating the amount that would be saved if KFRE(AM) were operated independently.

8. Competition and Diversity in the Market. The fifth factor is the nature of the relevant market in light of the Commission's concerns about diversity and competition. Pappas asserts that the Fresno-Visalia Designated Market Area (DMA), which is ranked 57th in the country by Nielsen, contains 11 television stations, 44 commercial radio stations and 6 non-commercial radio stations, for a total of 61 stations, comprising 43 separately owned and operated broadcast "voices." Pappas also submits that the Fresno-Visalia market is served by 11 low power television stations and translators licensed to 6 independent owners, 2 cable systems with cable penetration of 50.6 percent, 7 daily newspapers and 14 weekly newspapers. Further, Pappas argues that the combined audience share of KFRE(AM) and KMPH-FM would only be 3.4 percent, a figure exceeded by two other radio station combinations in the market.⁴

Discussion

9. In analyzing a case-by-case request for a waiver of the one-to-a-market rule, the Commission's "goal in all situations is to permit the public to benefit from such efficiencies of operation as may be achieved through the use of common facilities and staff, consistent with the maintenance of diversity and vigorous competition within the market areas involved." Second Report and Order Recon., 4 FCC Rcd at 6491. We conclude that, on balance, Pappas' showing in support of a waiver of the one-to-a-market rule meets our case-by-case criteria, and that a waiver in this instance would not adversely affect competition and diversity in the Fresno-Visalia market.

10. Pappas has shown that joint operation of the stations will result in yearly cost savings of between \$165,000 and \$235,000. Pappas has also demonstrated the potential for enhanced programming and service benefits. The proposed combination will strengthen KFRE(AM)'s news gathering and reporting abilities by providing it access to KMPH-FM and KMPH(TV)'s existing resources and local programming. With respect to the types of facilities involved, the Commission's "concern with the types of facilities merging under the authority of a one-to-a-market waiver reflects our interest in assessing the potential impact of a proposed combination of stations in a given market in order that we might predict and avoid any significant adverse effect on diversity or competition from too powerful a combination." Great American Television and Radio Co., Inc., 4 FCC Rcd at 6349. In this instance, we find that Pappas has demonstrated that the level of competition and diversity in the Fresno-Visalia market will remain high due to the number of remaining "voices" in the market. See para. 11, below. While the technical facilities of the stations involved are significant, we find that given the substantial competition in the market, the proposed combination does not present issues of market dominance inconsistent with

⁴ Pappas states that, based upon the Fall 1995 Arbitron figures for the Fresno-Visalia metro market, the stations that exceed the combined share of its proposed combination are: (1) KMJ(AM) and KSKS(FM) with a combined market share of 18.9 percent; and (2) KKTR(AM) and KBOS-FM with a combined market share of 6.5 percent.

the public interest.⁵ In addition, Pappas has shown that, since it took over KMPH-FM in 1992, the station has suffered losses of more than \$ 2.5 million. Further, while precise losses with respect to KFRE(AM) are difficult to determine since the station has never been operated as a stand-alone facility and separate figures are not available, Pappas has approximated that KFRE(AM)'s losses for 1995 were in excess of \$188,000.

11. We further find that the market will be served by a sufficient number of media "voices" and that the proposed combination will not create any undue concentration of ownership or control of broadcast media in the Fresno-Visalia market. Our independent analysis indicates that after the assignment is approved, the Fresno-Visalia DMA -- ranked 57th in the country -- will continue to be served by 19 AM stations, 35 FM stations and 12 UHF television stations, for a total of 66 broadcast stations.⁶ Of those stations, 38 radio stations and 11 television stations will remain separately owned and operated, for a total of 49 separately owned and operated broadcast "voices" in the market.⁷ In addition, other "voices" in the market include 11 low power television stations and translators which provide programming that wouldn't normally reach the area, 7 daily newspapers, 14 weekly newspapers, and 2 separate cable systems with cable penetration of 50.6 percent. In light of the above, we are persuaded that the public benefits of common ownership of KFRE(AM), KMPH-FM, and KMPH(TV) outweigh any negative effect on competition and diversity in the Fresno-Visalia market that the combination will engender and that a waiver of the one-to-a-market rule is therefore warranted.

⁵ The staff has confirmed Pappas's claim that there are 15 Class B stations in the Fresno-Visalia market and has determined that 4 of these Class B FM stations have technical facilities which are similar to or exceed the technical facilities of KMPH-FM. We have also determined that 2 UHF stations in the market have facilities that are comparable to KMPH(TV). Further, our analysis indicates that there is (1) one four-station radio combination (2 AM and 2 FM) with a combined audience share of 8.4 percent; (2) one three-station radio combination (1 AM and 2 FM) with a 5.4 percent combined audience share rating; and (3) six two-station radio combinations (1 AM and 1 FM) whose combined audience share exceeds the combined audience share of the proposed radio combination herein.

⁶ There are no VHF television stations licensed to the communities within the Fresno-Visalia DMA. Some translator stations bring VHF station programming into the market, however.

⁷ Although Pappas contends that there are 61 broadcast stations, comprising 43 separately owned and operated "voices", our independent study indicates that there are 66 broadcast stations, comprising 49 separately owned and operated "voices" resulting in greater diversity than claimed by Pappas. See para. 8.

12. Accordingly, IT IS ORDERED, That the request for a waiver of the Commission's one-to-a-market rule, 47 C.F.R. § 73.3555(c), IS HEREBY GRANTED; and having found the applicant fully qualified, the application for assignment of license (BALH-951130ED) of KFRE(AM), Fresno, California from EBE Communications Limited Partnership to Harry J. Pappas IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau